

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

DON BLANKENSHIP,

Plaintiff,

v.

Civil Action No. 2:19-cv-00236

FOX NEWS NETWORK, LLC et al.,

Defendants.

ORDER

Pending is the plaintiff's motion to seal an exhibit submitted in support of objections to the Magistrate Judge's discovery order, filed on January 4, 2021 (ECF No. 711).

Under the protective order governing this action, any party, non-party, or attorney wishing to use any produced document marked "CONFIDENTIAL" as an exhibit or as evidence in this matter must provide notice to and confer with the producing party before using the document. See ECF No. 495 at 3. The parties are to attempt to resolve the issue by reaching an agreement that the document is not confidential and may be used or by creating a mutually acceptable redacted version of the document that may be used. See id. If, after conferring, the parties cannot reach an amicable resolution, they may present the issue to the court, which will then determine whether the document should be withheld

from the public record. See id. at 3-4. When presenting the issue to the court, the proponent of continued confidentiality bears the burden of persuading the court that the document should be withheld from the public record by discussing the basis for sealing the document in light of the public rights of access as defined by controlling precedent. See id. at 4; see also LR Civ P 26.4(c)(2); Administrative Procedures for Electronic Case Filing § 12.6.1.

Additionally, if the document is provided to the court via the electronic docket, the providing party should present it as an attachment to a motion to seal, in which case the providing party should take care that the attachment is filed under provisional seal, pending the court's resolution. See LR Civ P 26.4(c)(2); Administrative Procedures for Electronic Case Filing § 12.6.1.

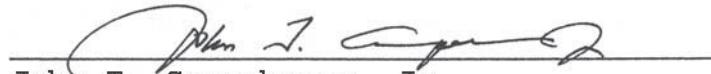
Here, the plaintiff asks the court to seal a document apparently produced in discovery by defendant Fox News Network, LLC ("Fox News"), submitted as an exhibit in support of the plaintiff's initial and amended objections to a discovery order entered by the Magistrate Judge. See ECF No. 711. It appears that the request is not in compliance with the protective order. Although Fox News has not opposed the motion, there is no indication that the plaintiff notified or conferred with Fox News

regarding his use of the document or whether the parties attempted to resolve the issue by agreeing to remove the document's confidential designation or by creating a mutually acceptable redacted version of the document.<sup>1</sup> The plaintiff's motion provides no basis for sealing the document and no discussion of why the document should be excepted from the public rights of access. Further, the plaintiff placed the document on the public electronic docket without provisionally sealing it.

Accordingly, it is ORDERED that the plaintiff's motion to seal (ECF No. 711) be, and hereby it is, denied.

The Clerk is directed to transmit copies of this order to all counsel of record and any unrepresented parties.

ENTER: June 8, 2021



John T. Copenhaver, Jr.  
Senior United States District Judge

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<sup>1</sup> In this regard, the court notes that the plaintiff states that he intends to refile the document after redacting confidential information. See ECF No. 711.